

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed January 28, 2005. Reconsideration and allowance of the application and presently pending claims 1-25 and 27-57 are respectfully requested.

1. Present Status of Patent Application

Upon entry of the amendments in this response, claims 1-25 and 27-57 remain pending in the present application. More specifically, claims 1, 19, 21, 29, 43 and 53-54 are directly amended. These amendments are specifically described hereinafter. It is believed that the foregoing amendments and additions add no new matter to the present application.

2. Response to Oath/Declaration Objections

The Office Action, at page 2, alleges that the oath or declaration is defective and requires a new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application and filing date, per MPEP §602.01 and §602.02. Apparently, the “oath or declaration is defective because: It does not identify the citizenship of each inventor,” and “the oath merely states the citizenship as IT, the country of citizenship needs to be spelled out in its entirety.”

Applicant respectfully traverses the objection to the oath or declaration for at least the following reasons. MPEP §605.01 addresses the requirement of citizenship. MPEP §201.14(d), Proper Identification of Priority Application, in Table I, indicates that “IT” designates Italy. Here, the Inventor citizenship is Italy, as indicated by the “IT” on the signed oath or declaration. Applicant has filed many applications in the U.S. using the identifier “IT” to indicate his citizenship. Those oaths or declarations were accepted by the USPTO. Applicant believes, in all fairness and equity, that the Applicant should be allowed to identify his citizenship with “IT” on the originally filed oath or declaration, which has been commonly used in practice and that has been consistently permitted in other patents granted by the U.S.P.T.O. Accordingly, Applicant respectfully requests that the objection be withdrawn.

However, if the Examiner maintains an objection in the next Office Action, the Applicant’s undersigned attorney will start the process of providing a supplemental oath or declaration upon allowance of the case. Applicant hopes that the Examiner appreciates the difficulties and costs associated with obtaining a supplemental oath or declaration in view that the inventor resides in a foreign country.

3. Specification Objection

The Office Action, at page 2, objects to the Specification for allegedly containing various informalities. Specifically, the Office Action objects to the Specification because of “the following informalities: the specification uses the word ‘digitised’. This spelling is not recognized by the Merriam Webster’s Collegiate Dictionary 10th Ed. The word should be spelled ‘digitized.’”

Applicant respectfully traverses the objection to the Specification for at least the following reasons. MPEP §608.01 states that “Examiners should not object to the specification and/or claims in patent applications merely because applicants are using British English spellings (e.g., colour) rather than American English spellings. It is not necessary to replace the British English spellings with the equivalent American English spellings in the U.S. patent applications. Note that 37 CFR 1.52(b)(1)(ii) only requires the application to be in the English language. There is no additional requirement that the English must be American English.”

Since British English spellings are permissible in the Specification, Applicant respectfully requests that the objection be withdrawn.

4. Claim Objections

Claims 1, 3, 5-7, 9, 14, 15, 19-22, 27, 28 and 36 have been objected to because of the following informalities described below.

a. The Office Action further alleges that “use of the word ‘digitised’ is improper throughout the claims. This spelling is not recognized by the Merriam Webster’s Collegiate Dictionary 10th Ed. The word should be spelled ‘digitized’. The Examiner notes that Applicant is required to correct all claims in which the word appears.”

Applicant respectfully traverses the objection to the claims for at least the following reasons. MPEP §608.01 states that “Examiners should not object to the specification and/or claims in patent applications merely because applicants are using British English spellings (e.g., colour) rather than American English spellings. It is not necessary to replace the British English spellings with the equivalent American English spellings in the U.S. patent applications. Note that 37 CFR 1.52(b)(1)(ii) only requires the application to be in the English language. There is no additional requirement that the English must be American English.”

Since British English spellings are permissible in the claims, and since the objected to language is proper British English, Applicant respectfully requests that the objection be withdrawn.

b. The Office Action alleges that in claim 5, the word “effects” is allegedly incorrect and the Office Action suggests that the term should be “effect” to be grammatically correct. Applicant appreciates the Examiner’s observation and appreciates the suggested revision.

However, the phrases as used in claim 5 reflect the intended scope of that claim. Claim 5 recites a plurality of algorithms, each being a “user-selectable digital effects” type algorithm. Accordingly, Applicant respectfully requests that the objection be withdrawn.

5. Response to Rejection of Claims 1-26 Under 35 U.S.C. §102(e)

In the Office Action, claims 1-3, 5-25, 27-31, 34-41, 43-49, 53-55 and 57 stand rejected under 35 U.S.C. §102(e) as allegedly being unpatentable by *Peppel* (U.S. Patent 6,200,216 B1). For a proper rejection of a claim under 35 U.S.C. Section 102, the cited reference must disclose all elements/features/steps of the claim. See, e.g., *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

Applicant observes that claims 1-3, 5-25, 27-31, 34-41, 43-49, 53-55 and 57 were rejected in the previous Office Action as being allegedly anticipated by *Peppel*. Applicant appreciates the additional detail provided in this Office Action, and in particular the citations to specific relevant portions of *Peppel*, which has helped the Applicant appreciate the basis of the rejections.

a. Independent Claims 1, 19 and 21

Applicant respectfully submits that independent claims 1, 19 and 21, as amended, are allowable for at least the reason that *Peppel* does not disclose, teach, or suggest the feature wherein a “remote gaming console synchronizes and copies *in real time* so that a user of the gaming console controls viewing *in real time* of the digitised photographic image data *displayed on the remote display*, and such that a second user views *in real time* corresponding digitised photographic image data on the remote display” as recited in claims 1 and 19 (emphasis added). Claim 21 recites the feature “wherein the gaming console and the further gaming console communicate via the wide area network such that the further gaming console

synchronizes and copies in real time so that a user of the gaming console controls in real time viewing of the digitised photographic image data displayed on the further domestic visual display, and such that a second user views in real time the digitised photographic image data on the further domestic visual display.”

Peppel does not disclose, teach, or suggest real time control of the remote display by the user of the gaming console. At most, *Peppel* discloses that “cards can be offered for sale at live, real time auctions with bids submitted by simultaneously connected users.” (Col. 8, lines 47-48). Applicant believes that this disclosure in *Peppel* does not go so far as to disclose, teach or suggest the above emphasized features of claims 1, 19 and 21, as amended.

To further illustrate the significance of *Peppel* and embodiments defined by claims 1, 19 and 21, the Examiner is respectfully referred to the well known system used by E-bay for the auction and sale of items. Sellers post information regarding an item for auction or sale, including image information, that is later viewed by interested potential buyers. Thus, the E-bay system (as does *Peppel*) only allows the seller to control viewing by the potential buyers in that buyers are limited to viewing images as provided by the seller. However, this above-described process does not occur in real time, and in no way does the seller control viewing in real time of images viewed by potential buyers.

Thus, *Peppel* does not anticipate claims 1, 19 or 21, and for at least this reason alone, the rejection under 35 U.S.C. §102(e) should be withdrawn.

b. Independent Claims 29, 43 and 53

Applicant respectfully submits that independent claims 29, 43 and 53, as amended, are allowable for at least the reason that *Peppel* does not disclose, teach, or suggest the feature “wherein the local video gaming console and the remote gaming console communicate with each other such that the remote video gaming console synchronizes and copies in *real time* the way in which a user of the local video gaming console controls display of the pre-captured photographic image on the local display, and such that the pre-captured photographic image is *displayed in real time* on the remote display *in accordance with control of the local display*” as recited in claims 29 and 53 (emphasis added). Claim 43 recites the feature “wherein the video gaming console and the remote gaming console communicate with each other such that the remote video gaming console synchronizes and copies in real time the way in which a user of the video gaming console controls display of the pre-captured photographic image on

the local display, and such that the pre-captured photographic image is displayed in real time on the remote display in accordance with control of the local display.”

The Examiner is respectfully referred above to the arguments for allowability of claims 1, 19 and 21 which clearly show that *Peppel* does not disclose, teach, or suggest the above-recited features of claims 29, 43 and 53, as amended. Thus, *Peppel* does not anticipate claims 29, 43 or 53, and for at least this reason alone, the rejection under 35 U.S.C. §102(e) should be withdrawn.

c. Dependent Claims 2-3, 5-18, 44-49, 54-55 and 57

Because independent claim 1 is allowable over the cited art of record, dependent claims 2-3, 5-18 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 2-3, 5-18 contain all features/elements of independent claim 1. See, e.g., *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Similarly, because independent claims 19, 21, 29, 43 and 53 are allowable over the cited art of record, dependent claim 20 (which depends from independent claim 19), dependent claims 22-25 and 27-28 (which depend from independent claim 21), dependent claims 30-31 and 34-41 (which depend from independent claim 29), dependent claims 44-49 (which depend from independent claim 43) and dependent claims 54-55 and 57 (which depend from independent claim 53) are allowable as a matter of law for at least the reason that the above-identified dependent claims contain all features/elements of their respective base independent claim. Accordingly, the rejection to these claims should be withdrawn.

6. Response to Rejection of Claims 4, 32-33, 42, 50-52, 54 and 56 Under 35 U.S.C. §103

In the Office Action, claims 4, 32-33, 50-51 and 54 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Peppel*. Additionally, claims 42, 52 and 56 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Peppel*, in view of *Webb et al.* (U.S. Patent 6,325,756 B1), hereinafter *Webb*. It is well-established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In Re Dow Chemical*, 5

U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

Because independent claim 1 is allowable over the cited art of record, dependent claim 4 (which depends from independent claim 1) is allowable as a matter of law for at least the reason that the dependent claim 4 contains all features/elements of independent claim 1. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

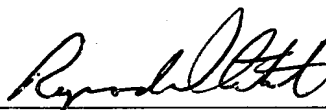
Similarly, because independent claims 29, 43 and 53 are allowable over the cited art of record, dependent claims 32-33 and 42 (which depend from independent claim 29), dependent claims 50-52 (which depend from independent claim 43) and dependent claims 54 and 56 (which depend from independent claim 53) are allowable as a matter of law for at least the reason that the above-identified dependent claims contain all features/elements of their respective base independent claim. Accordingly, the rejection to these claims should be withdrawn.

Applicant notes that claim 54 is rejected under 35 U.S.C. §103(a), as noted above in this section, and under 35 U.S.C. §102(e), as noted in section 5 of this response. Allowability of claim 54 is, accordingly, addressed under both basis of rejection to advance prosecution of the instant case.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims 1-25 and 27-57 are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Raymond W. Armentrout', is written over a horizontal line.

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